

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-3512

DATE OF INTRODUCTION:

November 22, 2004

SPONSOR:

Assemblyman Johnson
Assemblywoman Voss
Assemblywoman Weinberg
Assemblyman Manzo

DATE OF RECOMMENDATION:

February 15, 2005

IDENTICAL BILL:

COMMITTEE:

Assembly Transportation Committee

DESCRIPTION:

This bill establishes the Light Rail Transportation Enterprise Zone Act.

ANALYSIS:

According to the statement attached to the bill, the bill's purpose is to "create light rail transportation zones having benefits similar to Urban Enterprise Zones, to encourage development of light rail systems along currently underutilized freight railroad tracks and rights of way."

The creation of a Light Rail Transportation Enterprise Zone Program is not recommended for several reasons. This bill contains benefits which are similar to those offered under the Urban Enterprise Zone Act which has expanded in ways that the original drafters never intended. For instance, prior to 1994, ten towns in eleven municipalities were designated as Urban Enterprise Zones; however, in 1994, legislation authorized the creation of ten additional zones and in 1995, legislation added seven more zones. In 2002, legislation added three more zones to that list. Finally, the thirty-first zone was added in 2004. In addition, Urban Enterprise Zone-impacted business districts, areas that have been "negatively impacted" by the presence of two or more adjacent Urban Enterprise Zones, have been created wherein reduced sales tax is collected. If there was a consensus that the Urban Enterprise Zone Program is operating as intended and is thought to be effective and efficient then this bill may represent sound policy. However, there has never been an independent, comprehensive analysis performed that confirms that the Urban Enterprise Zone Program has actually been a benefit to the participating communities, yet the Program is being constantly amended and expanded.

In addition, the original purpose of the Urban Enterprise Zones Act was to assist in the revitalization of the State's economically distressed urban areas. Given the ease with which the benefits available under the Urban Enterprise Zone Program are being expanded, it is conceivable that all municipalities in New Jersey will be able to credibly

and successfully press for Urban Enterprise Zone benefits, even if not located within an Urban Enterprise Zone. As originally conceived, the Urban Enterprise Zone Program was to be limited and its benefits restricted to the most dire cases. This bill does not establish that its provisions would further that purpose.

This bill permits a partial exemption from the Sales and Use Tax Act, similar to that which is set forth in the Urban Enterprise Zone Act. The greater the number of municipalities that have 3% sales tax, the more that New Jersey becomes a patchwork of differing sales tax rates. This is contrary to tax simplicity and uniformity.

Since the inception of the Urban Enterprise Zones Act, competitors located outside of the zones have complained of and have perceived unfair tax advantages for vendors located within the zones. There have been many complaints of fraud submitted to the Urban Enterprise Zone Authority and to the Division of Taxation by vendors located outside of the zones charging that Urban Enterprise Zone vendors purchase items tax-free and then transport the property to other locations for use outside of the Zone. Permitting more vendors the entitlement of a tax exemption would only exacerbate this situation.

A major reason many municipalities are now petitioning for an Urban Enterprise Zone or Urban Enterprise Zone similar benefits, may be the belief that such a designation would replace revenue that the municipality is currently losing from other sources. For instance, municipal representatives have testified to the Sales and Use Tax Review Commission that Urban Enterprise Zone designation would benefit the municipality since they are currently experiencing financial problems. The main theme in urging the Commission to approve a bill creating yet another zone, stresses that Urban Enterprise Zone status would provide funds for municipal use.

Finally, the sales and use tax partial exemption set forth in the bill may not be constitutional. Under the Commerce Clause, a state may not impose taxes on out-of-State sale transactions that exceed the taxes imposed on in-State transactions. This bill halves the 6% sales tax rate for sales that take place within a zone. However, New Jersey law imposes a 6% compensating use tax on goods purchased outside of New Jersey but brought into the State for use here. Thus, the law appears to discriminate between a "sale" and a "use" based upon where the transaction occurs. As a result, non-zone New Jersey retailers are forced to compete with out-of-State retailers that deliver goods into a designated zone, as well as with the in-zone vendors. To comply with the Commerce Clause, the Division must take the position that a New Jersey purchaser would be able to claim a 3% use tax rate if delivery is taken within the zone. The de facto extension of the 3% rate to retailers outside of New Jersey was never contemplated, but is nonetheless a real consequence of this bill. Any expansion or creation of new 3% zones only perpetuates this situation.

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RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 8

COMMISSION MEMBERS ABSTAINING: 0

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